

THE DRAIN CODE OF 1956 (EXCERPT)

Act 40 of 1956

CHAPTER 4.
COUNTY DRAINS.

280.71 Petitions to establish drainage districts; filing, signers, certificate of county treasurer; municipality-signed petition.

Sec. 71. After a drainage district has been established and the order therefor filed with the county drain commissioner, a petition to locate, establish and construct a drain may be filed with the commissioner having jurisdiction of the lands designated in such order as constituting the drainage district. Such petition shall ask for the location, establishment and construction of the drain or drains, or any part thereof, as described in said order. The petition shall be signed by a number of freeholders in said drainage district whose lands would be liable to an assessment for benefits, equal to 1/2 the number of freeholders whose lands would be traversed by the drain or drains applied for or abut on any highway or street along the side of which such drain extends, between the point where such drain enters such highway and the point where it leaves such highway and which lands are within the drainage district. Such petition shall be accompanied by a description of the land in said district owned by each signer and by a certificate of the county treasurer as to payment of taxes and special assessments against such lands. Such certificate shall be in substantially the following form:

I hereby certify that there are no taxes or special assessments unpaid against any of the lands described in the annexed list according to the records of the county treasurer's office for the past 3 years, except as follows:

Description	Year	Tax or assessment	Amount
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The name of any signer as to whose land such certificate shows taxes or assessments unpaid for 3 years shall not be counted. The eligibility of the signers to such petition shall be determined by the commissioner according to their interest of record in the office of the register of deeds in the probate court or the circuit court of the county in which such lands are situated at the time such petition is filed. In determining the number of owners whose lands are traversed by such drain, or abut thereon as hereinbefore prescribed, the drain commissioner shall investigate the records of the register of deeds, of the probate court and of the circuit court of the county, and shall make diligent inquiry in the community, including inquiry of anyone in possession of all of such lands so traversed or so abutting as to the ownership thereof. In lieu of a petition signed by freeholders as aforesaid, the petition may be signed solely by a city, village or township when duly authorized by its governing body, or by any combination of such municipalities, if such petitioning municipality or municipalities will be liable to assessments at large for at least a percentage of the total amount to be assessed for the cost of the proposed drain. In the event of such a municipally signed petition, then the foregoing provisions of this section, other than the first 2 sentences thereof, shall not be applicable.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1967, Act 214, Imd. Eff. July 10, 1967.

Popular name: Act 40

280.72 Board of determination; appointment, qualifications, and compensation of members; location of meeting; failure or refusal to serve; informing legislator of persons appointed; notice of meeting; publication; affidavit of mailing; effect of failure to receive notice; expenses of notice; election of chairperson and secretary; determination of necessity of proposed drain; statement; orders of board; cost; notice; appeal; duties of commissioner.

Sec. 72. (1) As soon as practicable after the filing of a petition, the commissioner authorized to act on the petition, if not disqualified under section 381 to make the apportionment of benefits, may appoint a board of determination composed of 3 disinterested property owners. If the commissioner is disqualified or chooses not to appoint the board of determination, the commissioner shall immediately file a copy of the petition with the chairperson of the county board of commissioners, together with a statement signed by the commissioner, showing that he or she is disqualified or chooses not to act in appointing a board of determination. Upon receiving a copy of the petition and certificate, the chairperson of the county board of commissioners, if not privately interested, as soon as practicable, shall appoint a board of determination composed of 3 disinterested property owners and shall immediately notify the drain commissioner of the names and addresses of those appointed. If the chairperson of the board of commissioners has a private interest in the proceedings, the drain committee of the county board of commissioners shall appoint the board of determination. Members of boards of determination shall be residents of the county but not of a township, city, or village affected by the drain, and may not be members of the county board of commissioners of the county. A meeting of the board of determination shall be called within the drainage district at a convenient place to be designated by the drain

commissioner. The board of determination meeting also may be held at a public building within the city, village, or township in which the drain is located. If 1 of those appointed to the board of determination fails or refuses to serve, the drain commissioner shall appoint a successor. The per diem compensation, mileage, and expenses of a member of the board of determination shall be the same as the county board of commissioners of the county. In counties where commissioners are not paid on a per diem basis the compensation, mileage, and expenses shall be fixed by the drain commissioner. The members of the board of determination shall not receive more than 1 per diem for a day no matter how many separate matters are considered on that day. Upon request, the county drain commissioner shall inform in writing the requesting state legislator who represents that portion of the area in which the proposed drain improvement is to be constructed of the names and addresses of the persons appointed to a board of determination.

(2) The drain commissioner shall give public notice of the time, date, and place of the meeting of the board of determination in the manner required by the open meetings act, Act No. 267 of the Public Acts of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws, and by publication in a newspaper of general circulation in the county at least 10 days before the meeting. Notice also shall be served on the county clerk and on the clerk of each township, city, and village in the district, personally or by registered mail, at least 10 days before the meeting. The drain commissioner also shall send notice, by first class mail, of the time, date, and place of the meeting, to each person whose name appears on the last city, village, or township tax assessment roll as owning land within the special assessment district, at the address shown on the roll. If an address does not appear on the roll, a notice need not be mailed to the person. The drain commissioner shall make an affidavit of the mailing and shall recite in the affidavit that the persons to whom the notice was mailed constitute all of the persons whose names and addresses appear upon the tax rolls as owning land within the particular special assessment district. The affidavit shall be conclusive proof that notice was mailed to each person to whom notice is required to be mailed pursuant to this section. The failure to receive a notice by mail shall not constitute a jurisdictional defect invalidating a drain proceeding or tax, or both, if notice has been sent by first class mail as provided in this section. Expenses of notification shall be paid by the drainage district when created.

(3) At the time and place fixed in the notice the board of determination shall meet, elect a chairperson and secretary, and proceed to determine the necessity of the proposed drain and whether the drain is conducive to public health, convenience, or welfare. The board of determination, if it considers it necessary, shall require the county drain commissioner to obtain from the county treasurer a statement showing the amount of taxes and special assessments levied against the land in the proposed drainage district on the tax rolls for the immediately preceding 3 years and the amount of the taxes and assessments remaining unpaid. If it appears from the statement that 25% or more of the taxes are unpaid on the lands, further action shall not be taken. After hearing the evidence offered, the board of determination shall make its determination on the necessity of the drain and whether the drain is conducive to public health, convenience, or welfare. If the board of determination finds, by a majority vote of the members, that the drain is not necessary and conducive to public health, convenience, or welfare, the board of determination shall file with the commissioner an order dismissing the petition, and a further petition for the drain shall not be entertained within 1 year after the determination. If the board of determination, by a majority vote, finds the drain proposed to be necessary and conducive to the public health, convenience, or welfare, the board of determination shall make an order to that effect and file the order with the commissioner. If the board of determination finds that a portion of the construction of the proposed drain is necessary for the protection of the public health in 1 or more cities, villages, and townships, the order shall set forth the determination giving the names of the municipalities receiving benefit for health. If the board of determination determines that the whole cost, except that to be levied against state or county highways for highway benefits, is necessary for the public health, the cost shall be levied against the townships, villages, and cities at large, and it shall not be necessary, in a subsequent order or notice to describe or refer to land included in or comprising the drainage district. Upon filing of the order of determination by the board of determination, the drain commissioner, within 10 days of filing, shall notify each municipality that it is liable to pay a percent of the cost of construction of the drain by reason of benefits at large for public health. The governing body of the township, city, or village, within 20 days after receipt of the notification by registered mail from the drain commissioner, may appeal the order of the board of determination to the probate court having jurisdiction in the county in which the township, city, or village is located. Upon receipt of the order of the board of determination, and if an appeal has not been taken by a municipality to the probate court, the commissioner, after 20 days, shall make his or her first order of determination in writing, giving the name or number of the drainage district. The commissioner shall establish the commencement, route, terminus, and type of construction of the drain, a copy of which order he or she shall file, within 15 days, in his or her office. If an appeal is taken to the probate court by a municipality, the commissioner shall file his or her first order of determination after the appeal procedures are terminated.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1957, Act 61, Imd. Eff. May 20, 1957;—Am. 1963, Act 215, Imd. Eff. May 17, 1963;—Am. 1963, Act 228, Imd. Eff. Sept. 6, 1963;—Am. 1965, Act 138, Eff. Mar. 31, 1966;—Am. 1969, Act 285, Eff. Mar. 20, 1970;—Am. 1970, Act 111, Eff. Apr. 1, 1971;—Am. 1972, Act 302, Imd. Eff. Dec. 22, 1972;—Am. 1978, Act 235, Imd. Eff. June 15, 1978;—Am. 1980, Act 120, Imd. Eff. May 21, 1980;—Am. 1987, Act 60, Imd. Eff. June 25, 1987.

Popular name: Act 40

280.72a Judicial determination of necessity; filing of action.

Sec. 72a. Whenever the board of determination finds by majority vote of the whole number of members that the drain is or is not necessary, any person feeling aggrieved by the determination may institute an action in the circuit court for the county in which the real property is located for a determination of necessity. The action shall be filed by the person aggrieved within 10 days after the determination of necessity or no necessity by the board of determination.

History: Add. 1968, Act 291, Imd. Eff. July 1, 1968;—Am. 1970, Act 111, Eff. Apr. 1, 1971.

Popular name: Act 40

280.73 Proposed drain; plans, specifications and cost estimates; route, approval; easements on rights of way.

Sec. 73. The commissioner shall secure from a professional engineer, plans, specifications and an estimate of cost of the proposed drain and descriptions of the lands or rights of way needed for the proposed drain. In approving the route of the drain as furnished by the engineers the commissioner shall not be limited to that described in the petition or in the first order of determination, if the new route is more efficient and serviceable. The commissioner shall endeavor to secure from the owners of each parcel or tract of land to be traversed or damaged by the proposed drain or drains an easement or release of right of way and all damages on account thereof.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1968, Act 79, Eff. Nov. 15, 1968.

Popular name: Act 40

280.74 Release of right of way; acknowledgments, oaths, form, area, signature of wife, resolution covering street or public place; open drain.

Sec. 74. Commissioners may take acknowledgments of releases of right of way and administer oaths in all proceedings in any way pertaining to drains under this act. A simple form of release of right of way and damages that shall set forth by reference to the survey of the drain, or by other convenient description, the particular land to be conveyed and signed and acknowledged by the person having the right to convey, shall be deemed a sufficient conveyance under the provisions of this act. All releases for rights of way shall be deemed to include sufficient ground on each side of the center line of such drain for the deposit of the excavations therefrom. It shall not be necessary for the wife to sign the release of right of way unless she has an interest in the land other than her inchoate right of dower. Whenever a portion of a drain shall be located within any street, highway or public place, then a resolution adopted by a majority vote of the governing body having jurisdiction over such street, highway or public place granting leave to construct such drain therein, designating the place to be traversed by said drain, shall be a sufficient release of the right of way, and shall be deemed a sufficient conveyance under this act, and said governing body may permit the construction of an open drain if such consent be set forth in such resolution.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956.

Popular name: Act 40

280.75 Condemnation proceedings; obtaining right-of-way, easement, or other property interest.

Sec. 75. If any person whose lands would be traversed or damaged by a proposed drain has not executed a release of the right-of-way, the drainage district may institute condemnation proceedings to obtain the necessary right-of-way, an easement, or other property interest pursuant to the uniform condemnation procedures act, 1980 PA 87, MCL 213.51 to 213.75.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 2013, Act 262, Imd. Eff. Dec. 30, 2013.

Popular name: Act 40

280.76 Repealed. 2013, Act 262, Imd. Eff. Dec. 30, 2013.

Compiler's note: The repealed section pertained to hearing requirements for condemnation proceedings.

Popular name: Act 40

280.77 Repealed. 2013, Act 262, Imd. Eff. Dec. 30, 2013.

Compiler's note: The repealed section pertained to citation requirements for condemnation proceedings.

Popular name: Act 40

280.78 Repealed. 2013, Act 262, Imd. Eff. Dec. 30, 2013.

Compiler's note: The repealed section pertained to notices and orders relative to condemnation proceedings.

Popular name: Act 40

280.79 Repealed. 2013, Act 262, Imd. Eff. Dec. 30, 2013.

Compiler's note: The repealed section pertained to conduct of condemnation proceedings.

Popular name: Act 40

280.80 Repealed. 2013, Act 262, Imd. Eff. Dec. 30, 2013.

Compiler's note: The repealed section pertained to hearings and orders appointing special commissioners.

Popular name: Act 40

280.81 Repealed. 2013, Act 262, Imd. Eff. Dec. 30, 2013.

Compiler's note: The repealed section pertained to determinations by court commissioners and adjournment requirements.

Popular name: Act 40

280.82 Repealed. 2013, Act 262, Imd. Eff. Dec. 30, 2013.

Compiler's note: The repealed section pertained to verdicts in condemnation hearings.

Popular name: Act 40

280.83 Repealed. 2013, Act 262, Imd. Eff. Dec. 30, 2013.

Compiler's note: The repealed section pertained to release of right of way and damages.

Popular name: Act 40

280.84 Repealed. 2013, Act 262, Imd. Eff. Dec. 30, 2013.

Compiler's note: The repealed section pertained to setting off damages and benefits.

Popular name: Act 40

280.85 Owner's use of land of right of way.

Sec. 85. The owner of any land over, through or across which a district has acquired a right of way for the construction and maintenance of an open or covered drain by grant, dedication, condemnation or otherwise, may use the land occupied by such right of way in any manner not inconsistent with the easement of the district. Any use of the right of way which will interfere with the operation of the drain or will increase the cost to the district of performing any of its work thereon is deemed to be inconsistent with the district's easement. Any landowner who violates any of the above provisions shall be subject to the penalties provided in section 421 of this act.

History: Add. 1962, Act 191, Eff. Mar. 28, 1963.

Popular name: Act 40

280.86 Repealed. 2013, Act 262, Imd. Eff. Dec. 30, 2013.

Compiler's note: The repealed section pertained to owner's use of right of way.

Popular name: Act 40

280.87 Repealed. 2013, Act 262, Imd. Eff. Dec. 30, 2013.

Compiler's note: The repealed section pertained to compensation of special commissioners.

Popular name: Act 40

280.88 Repealed. 2013, Act 262, Imd. Eff. Dec. 30, 2013.

Compiler's note: The repealed section pertained to certificates, reports, and determinations as prima facie evidence.

Popular name: Act 40